10-1-1954

Juries -- Verdicts -- Affidavits not Permitted to Impeach

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in the latter, Justice Holmes stated, "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court, but that it shall not be used at all. Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the government's own wrong cannot be used by it in the way proposed." Judge L. Hand concluded, "I do not see any difference in principle between obtaining the first indictment by the unlawful extraction of evidence, necessary to its support, and obtaining a document by an unreasonable search."

Another issue raised by the defense and supported by the dissent was that of entrapment. This defense has been defined as follows: "When the criminal design originates, not with the accused, but it is conceived in the mind of the government officers, and the accused is by persuasion, deceitful representation, or inducement lured into the commission of a criminal act, the government is estopped by sound public policy from prosecution therefore."[14] The point being that the defendant had to repeat the alleged perjurious statements made in the grand jury hearings or else admit the charge against him. Thus the government induced the defendant to perjure himself by securing an indictment for perjury against him by illegal means, when they knew he must inevitably repeat the perjury in his defense, but without the procuration of the indictment there could have been no perjurious statements. The court, however, rejected this rather broad interpretation of entrapment and added that it was inconceivable, to the court at least, that the government would deliberately procure a false indictment in the hope of later obtaining perjurious statements at the trial since such statements could be more easily procured in a new grand jury proceeding.

Although the entrapment argument does not seem very forceful, in the light of the cogency of the argument that the doctrine of the Silverthorne case[15] is applicable, as well as the repugnance to public policy of the perhaps illicit or at least questionable actions of the government, the dissenting opinion seems to contain a more accurate appraisal of the law involved.

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JURIES-VERDICTS-AFFIDAVITS NOT PERMITTED TO IMPEACH

The defendant was found guilty of rape. After trial a juror's affidavit revealed that, although convinced of the defendant's innocence, he failed to object to the verdict because of a mistaken belief that a majority vote of

14. Sorrells v. United States, 287 U.S. 435 (1932). See also Butts v. United States, 273 Fed. 35 (8th Cir. 1921).
15. 251 U.S. 385 (1920).

jurors was sufficient to convict.[1] New trial granted by circuit court and the state appealed. *Held,* reversed; It was error to grant a new trial. Affidavits of jurors are inadmissible to impeach and overthrow a verdict.[2] *State v. Ramirez,* 73 So.2d 218 (Fla. 1954).

According to two earlier cases, *Packard v. United States*[3] and *State v. Hascall,*[4] affidavits of jurors to the effect they misunderstood the instructions of the court were admissible to impeach their verdicts. In the *Packard* case it was held that no person is more competent than the juror himself, to prove he misunderstood the charge.[5] There was sharp conflict among early American courts as to the admissibility of juror's affidavits.[6] One tribunal took the extreme view that where a verdict was determined by drawing lots,[7] such fact could not be proved by juror's testimony.[8] In a case where five jurors presented affidavits that they misunderstood instructions, such affidavits were held inadmissible.[9] In another decision a juror was not permitted to testify that he was threatened with bodily harm by other jurors for persistence in voting for acquittal.[10] Under the more accepted rule, evidence that jurors misunderstood the instructions[11] of the court cannot be shown to impeach their verdict.[12] In a recent federal case the court refused to hear the testimony of two jurors that the jury foreman misled them into believing that a majority vote was sufficient, and dissenters had to join to make the verdict unanimous.[13] Jurors are legally disabled from impeaching their verdict, generally, except as provided by statutes.[14] A court may receive a

1. The juror confused the trial judge's charge that in the event of a verdict of guilty, a vote of a majority was sufficient for a recommendation of mercy.
2. *Accord,* Dempsey-Vanderbilt Hotel v. Huisman, 153 Fla. 800, 15 So.2d 903 (1943); Hamp v. State, 130 Fla. 801, 178 So. 833 (1937); Int'l Lubricant Corp. v. Grant, 128 Fla. 670, 175 So. 727 (1937); Turner v. State, 99 Fla. 246, 126 So. 158 (1930); Linsley v. State, 88 Fla. 135, 101 So. 273 (1924); Kelly v. State, 39 Fla. 122, 22 So. 303 (1897); Coker v. Hayes, 16 Fla. 368 (1878).
3. 1 Greene 325, 48 Am.Dec. 375 (Iowa 1848).
4. 6 N.H. 352 (1833).
5. *But cf.,* Wright v. Ill. and Miss. Telegraph Co., 20 Iowa 195 (1866) *Reversing* Packard v. United States, see note 3, *supra.*
6. Smith v. Eames, 3 Scam 76, 36 Am.Dec. 515 (Ill. 1841); Hamblin v. State, 81 Neb. 148, 115 N.W. 850, 16 Ann.Cas. 569 (1908); Tyler v. Steven, 4 N.H. 116, 17 Am.Dec. 404 (1827); Norris v. State, 3 Humph 333, 39 Am.Dec. 175 (Tenn. 1842).
7. Cluggage v. Swan, 4 Binn. 150, 5 Am.Dec. 400 (Pa. 1811).
8. However, FLA. STAT. § 920.04 (1951) provides that a verdict determined by lots, is grounds for motion for new trial.
9. Tyler v. Steven, see note 6, *supra.*
10. State v. Aker, 54 Wash 342, 103 Pac. 420, 18 Ann.Cas. 922 (1909).
11. Jordon v. United States, 66 App.D.C. 309, 87 F.2d 64 (D.C. Cir. 1936); Loney v. United States, 151 F.2d 1 (10th Cir. 1945); Davenport v. Com., 258 Ky. 628, 148 S.W.2d 1054 (1941); State v. Pace, 183 La. 838, 165 So. 6 (1936); Smith v. State, 59 Okl Cr. 237, 56 P.2d 923 (1936); Franco v. State, 141 Tex Cr. R. 246, 147 S.W.2d 1089 (1941).
12. Harris v. State, 241 Ala. 240, 2 So.2d 431 (1941); Turner v. State, 99 Fla. 246, 126 So. 158 (1930); Perry v. Bailey, 12 Kan. 39 (1874); Bartlett-v. Patton, 33 W. Va. 71, 10 S.E. 21 (1889).
13. United States v. Nystrom, 116 F.Supp. 771 (W.D. Pa. 1953).
14. Brackin v. State, 31 Ala.App.228, 14 So.2d 383 (1943); State v. Bank, 227 Iowa 1208, 290 N.W. 534 (1940); *accord,* Huddleston v. State, 258 Ala. 579, 64 So.2d 90 (1952); People v. Sutic, 41 Cal.2d 483, 261 P.2d 241 (1954); State v. Dye, 148 Kan.421, 83 P.2d 113 (1938).

juror's testimony to facts evidencing outside influence, but he cannot testify that such outside influence affected his verdict.[15]

In the instant case, the juror remained silent when the verdict of guilty was read aloud in open court. If he objected to such verdict, that was time to be heard.[16] The Supreme Court said that matters presented in the juror's affidavit showed it essentially inhered in the verdict itself,[17] and was inadmissible. Florida follows the general rule,[18] except as to matters which do *not* inhere in the verdict,[19] or as otherwise provided by statute.[20]

The universal adoption of the rule has been a matter of public policy which seeks to preserve the stability of the courts. "Such evidence, though not irrelevant, must be excluded, since experience has shown it is more likely to prevent than promote the discovery of truth".[21] Not to refuse jurors testimony is a dangerous principle to follow. It permits tampering with jurors. By various and improper influences, affidavits could be obtained from jurors upon which to ground motions for new trials in almost every case.[22] It is conceded the rule leaves something to be desired since some persons may become the victims of chance or mistake. However, it is better than to introduce a rule which could be productive of infinite mischief, whereby no verdict could be permitted to stand.[23] *In Perry v. Bailey,* [24] Justice Brewer said:

> When a juror is heard to impeach his own verdict because of some matter resting in his own consciousness, the power is given him to nullify the expressed conclusions under oath of himself and eleven others.

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SEARCH AND SEIZURE-STATUTORY AUTHORITY TO SEARCH WITHOUT WARRANT

Defendant's license was suspended when gambling implements were found on the premises. The licensee instituted a certiorari proceeding to quash the order, on grounds that the evidence had been procured as a result

15. State v. McKay, 63 Nev. 118, 165 P.2d 389 (1946).
16. United States v. Nystrom, 116 F.Supp. 771 (W.D. Pa. 1953); State v. Pollock, 57 Ariz.415, 114 P.2d 249 (1941); Lawson v. Com., 278 Ky. 1, 127 S.W.2d 876 (1939); State v. Priestley, 97 Utah 158, 91 P.2d 447 (1939).
17. Brackin v. State, 31 Ala. App. 228, 14 So.2d 383 (1943); Linsley v. State, 88 Fla. 135, 101 So. 173 (1924).
18. *Ibid.*
19. Turner v. State, 130 Fla. 801, 178 So. 833 (1930); Linsley v. State, 88 Fla. 135, 101 So. 273 (1924); Perry v. Bailey, 12 Kan.539 (1874).
20. FLA. STAT. § 920.04; see note 8, *supra;* and FLA. STAT. § 920.05, which provides that misconduct of jurors is grounds for motion for new trial.
21. Blodgett v. Park, 76 N.H. 435, 84 Atl. 42, Ann.Cas. 1913B, 853 (1912).
22. Norris v. State, see note 6, *supra.*
23. Tyler v. Steven, see note 6, *supra.*
24. 12 Kan. 539 (1874).